IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHANTILLY FARMS, INC. and BARBARA L. NEILSON,	:	CIVIL ACTION
Plaintiffs,	:	
v.	:	NO. 00-3903
WEST PIKELAND TOWNSHIP, et al.,	:	
Defendants.	:	

ROBERT F. KELLY, Sr. J. FEBRUARY 27, 2002

On August 2, 2000, Plaintiffs, Chantilly Farms, Inc. and Barbara L. Neilson, filed a Complaint against the Defendants, Citizens for West Pikeland's Future, Inc., and Terri Cullen, Tom Grant, Ernie Holling, Barbara Hurt-Simmons, Howard Imhof, Suzanne Kaplan, Maurice Kring, Steve Loving and Tom Nowlan, individually and in their capacity as directors, officers or Citizens of West Pikeland's Future, Inc. ("Private Defendants") and the Defendants, West Pikeland Township, George Irwin, Andrew McCreight, J. Chris Petry, Peter Hughes, Michael Craven, Franklin Best, John Hennsler, Thomas Dinan and David Dinwoodie ("Township Defendants"). Plaintiffs causes of action are based upon the Township Defendants' denial of the Plaintiffs' By-Right Plan for the Chantilly Farms Subdivision and the Defendants' actions surrounding the denial. In late February 2001, Plaintiffs and the Township Defendants reached a settlement regarding the Plaintiffs' Land Use Appeal. The Township Defendants had agreed to a resolution of the approval of the Plaintiffs' development plans for the Chantilly Farms Subdivision and final approval of the Plaintiffs' plan was scheduled for the evening of March 19,

2001. Therefore, in late February 2001, the only remaining defendants were the Private Defendants.

Private Defendants filed a Motion to Dismiss. While that motion was pending, Plaintiffs allege that a settlement was reached between the Plaintiffs and the Private Defendants. Because the Court was not informed as to a possible settlement, on March 26, 2001, we granted Private Defendants' Motion to Dismiss. Currently before this Court is Plaintiffs' Motion To Enforce a Settlement Agreement, For Attorneys Fees and Costs and to Vacate this Court's Order Entered March 26, 2001. Plaintiffs argue that an oral settlement was reached between the parties on March 19, 2001, the terms of which were later confirmed by a letter the following day by co-counsel for Defendant Maurice Kring.[1] Plaintiffs allege that Private Defendants changed their minds as to the existence of the settlement agreement as a result of this Court's dismissal of the Private Defendants from the above-captioned matter. Private Defendants argue that although a verbal agreement was reached on March 19, 2001, that Plaintiffs' draft settlement agreement contained a term that was not originally agreed to at the March 19, 2001 meeting thereby arguing that no settlement exists.

This Court held a hearing on December 5, 2001, at which time the Plaintiffs presented testimony corroborating the existence and terms of the alleged settlement. In addition to the fact that Robert L. Sugarman, Esquire, ("Sugarman") counsel for all of the Private Defendants and one of the three individuals who participated in the settlement conference which is at the heart of this controversy, did not testify at the hearing as to his version of the facts, he

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[1] Defendant Maurice Kring does not oppose the Motion to Enforce.

did not offer any contradictory testimony or evidence.[2] The Court now makes findings of fact, sets forth applicable legal principles and reaches the following conclusions of law.

FINDINGS OF FACT

1. On or about March 16, 2001, Joseph Goldberg, Esquire ("Goldberg") contacted Joseph P. Ryan, Esquire ("Ryan") to explore the possibility of a settlement. (N.T. 6)

2. Goldberg is co-counsel for Defendant, Maurice Kring ("Kring"). (N.T. 6).

3. Ryan is counsel for the Plaintiffs. (N.T. 37).

4. On March 16, 2001, Goldberg and Ryan discussed the following:

(a) Goldberg inquired as to whether the Plaintiffs would be willing to eliminate four (4) lots from their plan in exchange for "no opposition" from the Private Defendants to the vote on the Plaintiffs' plans during the evening of March 19, 2001. Goldberg had been given authority to settle along these lines by all of the Private Defendants. (N.T. 7-8, 39-40).

(b) In response to this settlement offer, Ryan responded "no" to the elimination of the four (4) lots. However, Ryan, on behalf of the Plaintiffs, was willing to settle the litigation with all of the Private Defendants along the following terms:

1) Plaintiffs would withdraw this action; 2) the Private Defendants would agree to not oppose the vote on the Plaintiffs' plan on the evening of March 19, 2001; 3) all of the litigation between these parties would end; 4) there would be no monetary payment by

[2] Defendants did offer into evidence four documents, three of which corroborates the existence of a settlement.

one party to another; and 5) there would be a complete release of all claims executed. (N.T. 8-9, 39-41).

(c) In response to the counter-settlement demand, Goldberg agreed to take the Plaintiffs' settlement demand to Sugarman counsel for all of the Private Defendants, so that Sugarman could relay the settlement demand to his clients, the Private Defendants. Goldberg promised to call Ryan back. (N.T. 40).

(d) Ryan suggested to Goldberg that if they were going to have a further settlement discussion on Monday, March 19, 2001, Sugarman should be part of the discussion. (N.T. 41).

5. Goldberg, together with Sugarman, contacted Ryan on March 19, 2001. (N.T. 11, 41).

6. At the conclusion of the telephone conference on March 19, 2001, Ryan, Goldberg and Sugarman reached a final settlement between the Plaintiffs and the Private Defendants to end any and all litigation between the parties on the following terms:

(a) This action would be settled with the understanding that there would be no claim by the Plaintiffs for counsel fees or costs. (N.T. 11).

(b) With respect to this action, no party would be deemed a "prevailing party" which is a condition precedent for someone petitioning for fees or costs. (N.T. 12, 41).

(c) The Land Use Appeal would be resolved either by the Private Defendants withdrawing their intervention or by them signing some form of an agreement. (N.T. 11).

(d) The Sunshine Act complaint that was either filed or about to be filed by the Private Defendants against the Township Defendants would be resolved by the Private

Defendants withdrawing their complaint or by them signing some form of an agreement. (N.T. 12).

(e) All outstanding litigation between the parties would be terminated. (N.T. 23, 41).

(f) There would be a mutual release of all claims. (N.T. 27, 41-42).

(g) None of the Private Defendants would appear that evening, March 19, 2001, to oppose the Plaintiffs' plan. (N.T. 13).

(h) Sugarman would confirm this settlement agreement by facsimile on March 19, 2001. (N.T. 12, 42).

(i) Ryan would prepare a written settlement agreement incorporating the terms agreed to by the parties on March 19, 2001, which would have to be approved by both Sugarman and Goldberg. (N.T. 12).

(j) The settlement agreement would be signed by all parties, not just the Plaintiffs, but the Private Defendants as well. (N.T. 12).

9. On the evening of March 19, 2001, none of the Private Defendants were present at the West Pikeland Township meeting, and, as such, there was no opposition by the Private Defendants to the Plaintiffs' plan. (N.T. 42).

10. The fact that the Private Defendants did not oppose the Plaintiffs' plan confirmed that an oral settlement agreement was reached between the parties on March 19, 2001.

11. Sugarman failed to confirm the settlement agreement by facsimile as agreed by him on March 19, 2001, and as a result, Ryan confirmed that a settlement agreement was reached between the parties by letter dated to Sugarman dated March 20, 2001. (N.T. 13-14, 42-43).

12. In the March 20, 2001, letter from Ryan to Sugarman, it is written:

> Contrary to your assertion during our conversation on Monday, March 19, 2001, I did not receive written confirmation of [Sugarman's] agreement during that conversation. I will confirm that [Sugarman] represented on behalf of all of [his] clients that [his] clients have agreed to withdraw any and all opposition to any aspect of the subdivision known as Chantilly Farms. [Sugarman's] clients will either join in the Settlement Agreement reached with the Township or withdraw [their] intervention in the State Court Appeal so that the Settlement Agreement can be incorporated into a Court Order. In consideration of the foregoing representations my client has agreed to settle his damage claim against your clients in Federal Court. I will draft a Settlement Agreement confirming the above. However, in the interim, I would still appreciate your written confirmation of a settlement. (Exhibit "P-3").

13. The letter dated March 20, 2001, from Ryan to Sugarman does not include all of the terms of the settlement nor was it meant to include every term. (N.T. 62-63).

14. Goldberg sent a letter by facsimile dated March 21, 2001, to Ryan with a carbon copy to Sugarman confirming the settlement agreement because his co-counsel, Sugarman, failed to confirm the settlement agreement by facsimile. (N.T. 14).

15. In the March 21, 2001, letter from Goldberg to Ryan it is written:

> This is to confirm our conversation of March 19, at which time it was agreed that the above-captioned matter was settled. During the conference call of March 19 involving [Sugarman], [Ryan] and [Goldberg], the following was agreed to:
>
> 1. The plaintiffs would discontinue, with prejudice, the federal suit against [the Private Defendants].
> 2. The plaintiffs in the federal suit will not pursue any claim for counsel fees or costs incurred in connection with this settlement.
> 3. Counsel for the [Private] Defendants will not pursue any claim for counsel fees or costs incurred in connection with the settlement of the federal suit.
> 4. [The Private Defendants] would not oppose the plan scheduled for a vote before the Board of Supervisors on the evening of March 19, 2001.
> 5. [The Private Defendants] would withdraw their opposition to the plan in the [Land Use Appeal].
> 6. All litigation in both state and federal court would be over.

> 7. A settlement agreement setting forth this understanding would be drafted and signed by the parties. This agreement will be drafted by [Ryan] subject to approval by [Goldberg] and [Sugarman].
>
> In consideration of this agreement, it is [Goldberg's] understanding that there was no opposition voiced by [Kring] or any of the [Private Defendants] at the meeting which took place on the evening of March 19, and that the plan was approved by the Board of Supervisors of West Pikeland Township. There will be no cash payment in connection with this settlement. The consideration necessary to make this binding has been set forth above. If [Goldberg has] in any way inaccurately set forth [the parties'] agreement, please notify [Goldberg] in writing at once. (Exhibit "P-1").

16. Sugarman never notified Goldberg in writing or otherwise that the terms in the March 21, 2001 letter from Goldberg to Ryan were inaccurate.

17. On March 21, 2001, Sugarman sent a facsimile to Ryan wherein it is written: "I confirm we agreed to settle by withdrawing our opposition and your dismissal and release of all claims." (N.T. 25-26, 45, 70-71; Exhibit "D-1").

18. By order entered March 26, 2001, this Court granted the Private Defendants' Motion to Dismiss and dismissed the Private Defendants from this action since the Court was not notified that the parties had settled the matter.

19. On or about March 30, 2001, Ryan forwarded a draft of a settlement agreement, incorporating the terms of the oral settlement of March 19, 2001, to Goldberg and Sugarman for their review and approval. (N.T. 14, 46-47; Exhibit "P-2").

20. The terms of the oral settlement agreement of March 19, 2001, and the March 21, 2001, letter from Goldberg to Ryan are embodied in the Plaintiffs' draft of the settlement agreement. (Exhibit "P-2").

21. On or about April 3, 2001, Ryan had a conversation with Goldberg in which

Goldberg advised Ryan that Sugarman stated that he had not agreed to the terms as stated in the Plaintiffs' draft of the settlement agreement. Ryan suggested that Goldberg or Sugarman should draft a settlement agreement. (N.T. 47).

22. Sugarman wrote back on April 3, 2001, stating he had not agreed to the terms of the Plaintiffs' draft of the settlement agreement. (N.T. 14-15; Exhibit "D-3").

23. Enclosed with the letter dated April 3, 2001, from Sugarman to Ryan, was the Private Defendants' draft of the settlement agreement. (Id.)

24. Ryan did not agree with the Private Defendants' dra, ft of the settlement agreement which was drafted by Sugarman as it did not incorporate all of the terms of the oral settlement agreement of March 19, 2001, as set forth in the letter dated March 21, 2001, from Goldberg to Ryan. The Private Defendants' draft of the settlement agreement only includes the terms specified in Sugarman's facsimile dated March 21, 2001. (N.T. 29, 47).

25. Ryan tried to contact Sugarman to discuss a written agreement incorporating the terms of the oral settlement agreement of March 19, 2001, and the March 21, 2001, letter from Goldberg to Ryan, but Sugarman was unavailable. (N.T. 49, 61).

26. About one (1) month after the parties agreed to the oral settlement agreement of March 19, 2001, Sugarman disputed that a settlement agreement existed. (N.T. 15).

27. On April 23, 2001, Plaintiffs filed their Motion to Enforce the Settlement Agreement, for Attorneys' Fees and Costs and to Vacate the Order Entered March 26, 2001 ("Motion to Enforce"). (N.T. 54).

28. In Defendant Kring's response to the Motion to Enforce, Kring does not oppose the Motion to Enforce which requests that the Plaintiffs' draft of the settlement agreement be

adopted as the true settlement agreement between the parties. (N.T. 21, 30).

29. On December 2, 2001, a hearing was held on the Motion to Enforce. At the hearing the following occurred:

a) Goldberg and Ryan provided credible, supporting and consistent testimony of the oral settlement agreement that was reached and entered into by the Plaintiffs and Private Defendants, by and through their counsel, Goldberg, Ryan and Sugarman, on March 19, 2001.

b) Sugarman, the third and final participant of the oral settlement agreement of March 19, 2001, and counsel for the Private Defendants, did not testify at the hearing.

c) Private Defendants, who oppose that an oral settlement agreement was reached on March 19, 2001, did not offer any evidence contradictory to the terms of the agreement as confirmed by the letter dated March 21, 2001, from Goldberg to Ryan.

CONCLUSIONS OF LAW

30. "The law is well settled that a district court has jurisdiction to enforce a settlement agreement entered into by litigants in a case pending before it." Rosso v. Foodsales, Inc., 400 F.Supp. 274, 276 (E.D. Pa. 1980).

31. This jurisdiction is grounded in the policy that favors the amicable resolution of disputes and the avoidance of costly and time-consuming litigation. Pugh v. Super Fresh Food Mkts., Inc., 640 F. Supp. 1306, 1307 (E.D. Pa. 1986) (citations omitted).

31. "[A]n agreement to settle a lawsuit, voluntarily entered into is binding upon the parties, whether or not made in the presence of the Court and even in the absence of a writing." Green v. John H. Lewis & Co., 436 F.2d 389, 390 (3d Cir. 1970).

32. Further, "a settlement agreement is still binding even if it is clear that a party had

a change of heart between the time he agreed to the terms of the settlement and when those terms were reduced to writing." Pugh, 640 F.Supp. at 1308 (*citing* Gross v. Penn Mutual Life Ins. Co., 396 F.Supp. 373, 375 (E.D. Pa. 1975).

33. Under Pennsylvania law, the enforceability of settlement agreements is governed by principles of contract law. Mazzella v. Koken, 739 A.2d 531, 536 (Pa. 1999).

34. To be enforceable, a settlement agreement must possess all of the elements of a valid contract. Id.

35. As with any contract, it is essential to the enforceability of a settlement agreement that "the minds of the parties should meet upon all the terms, as well as the subject matter, of the [agreement]." Id.

36. The undisputed facts indicate that Ryan, Goldberg and Sugarman orally agreed to a settlement during a telephone conference which took place on March 19, 2001.

37. The letters by Ryan dated March 20, 2001 and Goldberg dated March 21, 2001, fully memorialized the terms of the settlement agreement between Plaintiffs and Private Defendants as agreed to during the March 19, 2001, telephone conference.

38. Sugarman did not dispute the terms of the agreement until after this Court entered an order on March 26, 2001, dismissing the Private Defendants from the instant action.

39. It was not until after March 26, 2001, that Sugarman contended that Private Defendants did not agree to the term of the settlement in which Private Defendants agreed to release the Plaintiffs of any future claims by the Private Defendants against the Plaintiffs.[3]

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[3] The Court notes the disingenuous position of Private Defendants regarding the meaning of the release term in the settlement agreement. First, although Private Defendants' Proposed Findings of Fact states that their meaning of the release clause was that Plaintiffs

40. The aforementioned release by the Private Defendants was embodied in the letter written by Goldberg dated March 21, 2001.

41. Goldberg's letter also advised the parties of the following: "If I have in any way inaccurately set forth our agreement, please notify me in writing at once."

42. Prior to March 26, 2001, Sugarman never notified either Goldberg or Ryan in writing or otherwise that he disagreed with any of the terms of Goldberg's March 21, 2001, letter.

43. Plaintiffs and Defendant Kring are entitled to have the draft settlement agreement enforced.

An appropriate Order follows.

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agreed to release the Private Defendants from all claims, Private Defendants then argue in their Brief that "Sugarman's understanding of the proposal was that the defendants would withdraw their opposition to the proposed development in exchange for the defendants dismissing their case and releasing plaintiffs of all claims." (Private Defs.' Findings and Br., 18). Therefore, Private Defendants argue that the meaning of the release was the same meaning as that understood by Plaintiffs and Kring. Second, Private Defendants did not dispute any terms of the settlement until after this Court dismissed the Private Defendants from this suit.

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WEST PIKELAND TOWNSHIP, et al.,	:	
Defendants.	:	

ORDER

AND NOW, this day of February, 2002, upon consideration of the Motion by Plaintiffs Chantilly Farms, Inc., and Barbara L. Neilson to Enforce Settlement Agreement, for Attorney Fees and to Vacate the Order Entered March 26, 2001 (Dkt. No. 33), any Responses thereto, and after a hearing held in this Court on December 5, 2001, it is hereby **ORDERED** that said motion is **GRANTED** in part and **DENIED** in part. It is further **ORDERED** that:

1. the Settlement Agreement attached hereto represents the Settlement Agreement reached by the Plaintiffs, Chantilly Farms, Inc. and Barbara Neilson and the Defendants, Citizens for West Pikeland's Future, Inc. and Terri Cullen, Tom Grant, Ernie Holling, Barbara Hurt-Simmons, Howard Imhof, Suzanne Kaplan, Maurice Kring, Steve Loving and Tome Nowlan, individually and in their capacity as directors or officers of Citizens for West Pikeland's Future, Inc. ("Private Defendants") on March 19, 2001;

2. Private Defendants are to abide by the terms of the Settlement Agreement;

3. the Order entered March 26, 2001 granting the Private Defendants' Motion to Dismiss is **VACATED** in that respect and Plaintiffs' action against the Private Defendants is **DISMISSED** with prejudice pursuant to the Settlement Agreement of March 19, 2001 and Local Rule of Civil Procedure 41.1(b); and

4. Plaintiffs are not entitled to attorneys' fees and costs in bringing the instant Motion.

BY THE COURT:

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ROBERT F. KELLY, Sr. J.